struction the wall bulged outward overhanging the property of the plaintiff about two inches, but neither the owner nor the contractor knew of the encroachment until after the building was completed. The suit was for mandatory injunction to compel removal of the wall *Held,* no injunction will lie. *Combs* v. *Lenox Realty Co.* (Me.), 88 Atl. 477.

It seems settled that equity has jurisdiction to compel removal of an encroaching building. *Huber* v. *Stark,* 124 Wis. 359, 102 N. W. 12, 109 Am. St. Rep. 937; *Curtis Co.* v. *Spencer Co.,* 203 Mass. 448, 89 N. E. 534, 133 Am. St. Rep. 307. The principal case follows what seems to be the better rule and that adopted by the majority of the courts that where the offending wall was built in good faith and the amount and value of the property appropriated is trivial, then if the cost of removal far outweighs the damage suffered by the trespass, the mandatory injunction should be refused. *Methodist Society* v. *Akers,* 167 Mass. 560, 46 N. E. 381; *Harrington* v. *McCarthy,* 169 Mass. 492, 48 N. E. 278, 61 Am. St. Rep. 298; *Hunter* v. *Carroll,* 64 N. H. 572, 15 Atl. 17. The rule as above stated is apparently an extension of the maxim, he who seeks equity must do equity. Every case should depend on its own circumstances and no mandatory injunction should issue when it would operate inequitably. *Levi* v. *Street Ry. Co.,* 193 Mass. 116, 78 N. E. 853. And in a Pennsylvania case where the remedy was granted it was decreed that the plaintiff should pay half the expenses of removal. *Pile* v *Pedrick,* 167 Pa. St. 296, 31 Atl. 646, 46 Am. St. Rep. 677. A majority of the cases granting an injunction will reveal some inequitable conduct on the part of defendant. *Kershishian* v. *Johnson,* 210 Mass. 135, 96 N. E. 56, 36 L. R. A. (N. S.) 402; *Norton* v. *Elwert,* 29 Ore. 583, 41 Pac. 926; *Baugh* v. *Bergdoll,* 227 Pa. St. 42, 76 Atl. 207.

The rule seems flexible enough to grant relief in cases of slight encroachment upon land in large business sections where the property is very valuable for in such cases the damages would be material.

INSURANCE—ACCIDENT INSURANCE—EXTENT OF LIABILITY.—Plaintiff sues to recover under an accident policy insuring him against injuries "wholly and continuously from the date of the accident disabling him and preventing him from performing every duty pertaining to any business or occupation." He was so injured in an accident that he was unable to attend to his business, yet he was often able to go out and might have attended to some of the minor details of the same. *Held,* the insurer is liable. *National Life and Accident Ins. Co.* v. *O'Brien's Ex'x* (Ky.), 159 S. W. 1134.

The interpretation of such terms as those used in the policy quoted *supra* has given rise to much contention. Some courts hold that there can be no recovery unless the insured is totally disabled to earn a livelihood at any employment—unless he is unable to do any kind of work in any manner. *Lyon* v. *Railway Passenger Assurance Co.,* 46 Iowa 631; *Merrill* v. *Traveler's Ins. Co.,* 91 Wis. 329, 64 N. W. 1039. Others hold that he need not be so disabled as to prevent him from doing anything whatsoever, but that he is totally disabled if common prudence requires him to cease his labors and rest in order to effect a more speedy

cure. *Turner* v. *Fidelity and Casualty Co.*, 112 Mich. 425, 70 N. W. 898; *Lobdill* v. *Laboring Men's Mut. Aid Ass'n*, 69 Minn. 14, 71 N. W. 696. This latter rule has been applied in practically all of the more recent decisions on this point. It is based on a well established rule of law, that a contract of insurance prepared by an insurance company will be construed liberally as against the insured and strictly as against the company. *Imperial Shale Brick Co.* v. *Jewett*, 169 N. Y. 143, 62 N. E. 167. Its object, indemnity for accidental injuries, should not be defeated by any narrow interpretation of its provisions.

LICENSES—REVOCATION OF PAROL LICENSES.—J., owning a tract of land and a narrow strip of land leading therefrom to a public highway and used as a private roadway, sold to plaintiff said tract of land, excluding the roadway, J agreeing by parol that plaintiff should have permanent use of the roadway. In a suit by plaintiff to enjoin the defendants, holding title to said roadway as devisees under the will of J, from obstructing the same, it was *Held*, plaintiff's right to use the roadway is based upon a parol license which becomes irrevocable upon the expenditure of money by plaintiff in improving said roadway, and otherwise incurring expense on the faith of the perpetual use of same. *Jann* v *Standard Cement Co.* (Ind.), 102 N. E. 872. See NOTES, p. 309.

MANDAMUS—JURISDICTIONAL MISTAKE OF LAW—COMPELLING JUDICIAL ACTION.—An inferior court by mistake of law erroneously dismissed an appeal from a justice's court. *Held*, mandamus lies to compel the assumption of jurisdiction and a trial on the merits. *Floyd* v. *District Court* (Nev.), 135 Pac. 922. See NOTES, p. 320.

MARRIAGE—COMMON LAW—INTENT TO CREATE IN BIGAMY CASES.—Two parties in good faith contracted, in New York, a ceremonial marriage void there because of a disability of one of the parties to marry in that state. They later removed to Illinois, where such disability did not exist, and where common-law marriages were valid, and they there continued to cohabit as man and wife. They always relied in good faith upon the original ceremonial marriage as being valid. *Held*, by such cohabitation, a common-law marriage is not created so as to make the man guilty of bigamy in later marrying another woman. *People* v. *Shaw* (Ill.), 102 N. E. 1031.

If cohabitation, though originally unlawful because of a disability of one of the parties, be innocent and *bona fide* intended to be matrimonial, the parties may, upon removal of the disability, assume the marital relation; and unless rebutted, the assumption of the relation will be presumed from the continued cohabitation after the cessation of the disability, if the cohabitation be always *bona fide*. *Barker* v. *Valentine*, 125 Mich. 336, 84 N. W. 297, 84 Am. St. Rep. 578, 51 L. R. A. 787; *Land* v. *Land*, 206 Ill. 288, 68 N. E. 1109, 99 Am. St. Rep. 171. The presumption in such a case is especially strong where the parties celebrated a *bona fide* and innocent ceremonial marriage, invalid because of a disability of one party, and continue to cohabit as man and wife after removal